STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion	:	
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Investigation of Applicability of Sections 16-122 and 16-108.6 of the Public Utilities Act.	:	**13-0506**

ORDER

January 28, 2014

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ORDER

By the Commission:

I. PROCEDURAL HISTORY

On September 4, 2013, the Illinois Commerce Commission ("Commission" or "ICC") entered an order initiating ("Initiating Order") a docket to investigate the applicability of Sections 16-122 and 16-108.6 of the Public Utilities Act ("PUA" or "Act"). In its Initiating Order, the Commission explained:

> These sections pertain to the release of customer-specific information by electric utilities. The Commission agrees with Staff's Report that the deployment of the Advanced Metering Infrastructure ("AMI"), Net Metering, Peak-Time Rebate Programs and certain Rate Design filings required by the electric utilities pursuant to statute has led to the immediate need for utilities to provide customer-specific information to third parties which may or may not conflict with other sections of the PUA. Because policies, practices, rules or programs may need to be established that apply to more than one electric utility, an investigation under Section 10-101 of the PUA is appropriate.

(Initiating Order at 1).

The Initiating Order refers to the Staff Report from the Commission's Office of Retail Market Development ("ORMD") dated August 30, 2013, in which the ORMD Staff reviewed issues related to the applicability of Sections 16-122 and 16-108.6(d) of the PUA. In a segment of the Staff Report entitled "List of Issues to be Addressed by the Investigation," ORMD Staff lists specific issues to be considered during this proceeding. The Initiating Order directs the parties in this proceeding to explore these issues in order to appropriately interpret the PUA as it relates to the dissemination of customer specific information. The issues identified are: (1) the release of aggregated, anonymous customer usage information; and (2) the release of individual and specific

information, including the identification of Peak Time Rebate ("PTR") and Net Metering ("NM") customers and Retail Electric Supplier ("RES") access to its customers' interval data that is not used for the purposes of billing a customer. (Staff Report at 3; Initiating Order at 2).

Because of the wide-ranging implications of these issues, the Commission named Commonwealth Edison Company ("ComEd") and Ameren Illinois Company ("Ameren") as parties to this investigation and noted that the case will be conducted as a contested case and not a rulemaking. (*Id*. at 3).

Pursuant to notice given in accordance with the law and rules and regulations of the Commission, a prehearing conference was held before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Chicago, Illinois on September 23, 2013. Aside from Commission Staff ("Staff"), ComEd and Ameren, the following parties intervened: City of Chicago ("City"), Citizens Utility Board ("CUB"), Retail Energy Supply Association ("RESA"), CNT Energy ("CNT"), Illinois Competitive Energy Association ("ICEA"), the Illinois Attorney General ("AG"), and Environmental Law & Policy Center ("ELPC").

Simultaneous Initial Verified Comments were filed by CNT, Ameren, ICEA, ComEd, CUB and Staff on October 15, 2013. Simultaneous Verified Reply Comments were filed by CNT, ICEA, ComEd, Ameren, Staff, the City, CUB, ELPC and the AG on November 5, 2013.[1] Simultaneous Verified Surreply Comments were filed by Ameren, CNT, Staff, RESA, ICEA, ComEd, the City, ELPC, the AG, and CUB on November 19, 2013.

On November 20, 2013, the parties filed stipulations waiving their rights to an evidentiary hearing, indicating that this matter be tried or otherwise resolved on the basis of written pleadings and submissions that are verified and supported by affidavit, and agreeing that the Commission may enter a final order in the matter in reliance thereon pursuant to 83 Ill. Adm. Code § 200.525. On November 22, 2013, the stipulations were approved by the ALJ and the verified comments were admitted into the record.

On December 6, 2013, the ALJ issued a Proposed Order in this matter. Briefs on Exceptions were filed by CUB, the AG, ComEd, CNT, ICEA, and RESA on December 23, 2013. Reply Briefs on Exceptions were filed by ICEA, Ameren, ComEd, Staff,[2] CUB, and the AG on January 8, 2014.

This Order considers all of the positions and arguments set forth in the Briefs on Exceptions and Reply Briefs on Exceptions listed above.

[1] The AG filed its Reply Comments on November 7, 2013.

[2] Staff filed an Errata and Corrected Reply Brief on Exceptions on January 9, 2014 to reflect a correction made to address a minor error contained in its Reply Brief on Exceptions.

II. APPLICABLE LAW

Section 16-122 states:

(a) Upon the request of a retail customer, or a person who presents verifiable authorization and is acting as the customer's agent, and payment of a reasonable fee, electric utilities shall provide to the customer or its authorized agent the customer's billing and usage data.

(b) Upon request from any alternative retail electric supplier and payment of a reasonable fee, an electric utility serving retail customers in its service area shall make available generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification. Provided however, no customer specific billing, usage or load shape data shall be provided under this subsection unless authorization to provide such information is provided by the customer pursuant to subsection (a) of this Section.

(c) Upon request from a unit of local government and payment of a reasonable fee, an electric utility shall make available information concerning the usage, load shape curves, and other characteristics of customers by customer classification and location within the boundaries of the unit of local government, however, no customer specific billing, usage, or load shape data shall be provided under this subsection unless authorization to provide that information is provided by the customer.

(d) All such customer information shall be made available in a timely fashion in an electronic format, if available.

(220 ILCS 5/16-122).

Section 16-108.6(d) provides in part that a participating utility's Smart Grid Advanced Metering Infrastructure Deployment Plan ("AMI Plan") is to secure the privacy of a customer's personal information. Section 16-108.6(d) describes "personal information" as "the customer's name, address, telephone number, and other personally identifying information, as well as information about the customer's electric usage" and requires electric utilities to secure the privacy of "personal information" as part of their AMI Plan. (220 ILCS 5/16-108.6(d)). Section 16-108.6(d) prohibits the disclosure of such information by utilities for commercial purposes, except where authorized.

III. COMMENTS

A. Aggregated, Anonymous Data

1. Staff

Staff asserts that Sections 16-122 and 16-108.6 of the PUA do not permit the release of data at the individual customer level by a utility to a third party without

authorization by the customer if the information is customer specific information. Staff notes that the PUA does not define "customer specific information." However, Section 16-108.6 of the PUA defines "personal information" as "the customer's name, address, telephone number, and other personally identifying information, as well as information about the customer's electric usage." (220 ILCS 5/16-108.6(d); Staff Initial Comments at 5).

Staff's position is that the PUA provides that "customer specific" and "personal information" is information about the customer's use of and payment for electric utility services that is either expressly linked with a customer's identify or that could, with reasonable effort, be linked to the customer's identity. Therefore, any data associated with a customer's name, address, and social security number is customer specific information, just as usage data linked to the same identifying information would be customer specific information. However, Staff states that data associated with a customer's zip code is (with possible rare exceptions) not customer specific information, because, unlike a name, address, or social security number, such information could not be individualized to one specific customer. (*Id*.).

In order to permit such data to be made available to authorized third parties such as RESs, while at the same time protecting personal and customer specific information from unauthorized disclosure, Staff recommends that the electric utilities should establish and follow a defined Anonymous Data Protocol ("Data Protocol") when receiving requests for data concerning the use of electric utility service at the individual customer level. Staff explains that the Data Protocol should be as follows:

a) Except as specifically allowed or required by law, information containing a specific customer's use of, or charges for, electric utility services that also identifies the customer will not be released absent the customer's consent.

b) Except as specifically allowed or required by law, information containing a specific customer's payment(s) for electric utility services that also identifies the customer will not be released absent the customer's consent.

c) Except as specifically allowed or required by law, information containing an individual customer's use of, charges for, or payments for electric utility service will only be provided without any customer identifiable information and in a manner that practically prevents the linkage of that data to the customer or to other customer specific information (such as an address).

(*Id*. at 6).

Staff contends that to accomplish this, data at the individual customer level should be provided anonymously: (a) for a geographic area no more granular than a five-digit zip code plus the first two to four additional zip digits ("zip+2-4"); and (b) only when that geographic area has *at least 30 customers* of each type or class for which data is provided.

In the event condition (b) is not met, Staff states that under its proposal, the electric utility would provide the requesting party only data on the next higher zip code basis, subject to the same restriction. Should the 30 customer condition still not be met, the electric utility should aggregate further using fewer digits of the zip code, and so on, until the condition is met. If the condition cannot be met at the five-digit zip code level, no data for the impacted customers would be provided. Staff asserts that maintaining a minimum 30-customer requirement ensures that the utilities and RESs are compliant with Section 16-122, as no customer specific information would be divulged. (*Id*.).

Staff believes it is important to clarify the terminology used when describing this issue due to some disagreement among the parties as to what various terms mean. Staff states that when it uses the term "aggregated, anonymous" data, it uses the word aggregated merely to highlight the fact that such data would be released by the utilities in batches of customers. Staff notes that CUB understands the word "'aggregated' to mean a compiled set of individual usage data, as opposed to say, one summed set of usage data." (Staff Surreply Comments at 2). Similarly, Staff points out that ComEd stated that "while referred to as 'aggregated', in fact the information at issue is that of individual customers who are located within some defined geographic area or zip code." (*Id*.). Staff asserts that its use of the term "aggregated" aligns with the manner in which it is used by ComEd and CUB. Staff is of the opinion that the issue of aggregating data in the sense of adding or summing up individual customer data is not an issue being considered by the Commission in this proceeding. In short, Staff recommends that the Commission not adopt protocols or guidelines "for the sharing of aggregated customer data possessed by electric utilities." (*Id*.). Hence, Staff has no opinion at this time on the City's proposal entitled "Aggregated Data" on page 22 of its Reply Comments. Staff recommends that the issue of summing up individual customer data need not, and should not, be addressed by the Commission in this proceeding.

Although Staff is sympathetic to CNT's concerns regarding the interpretation of Section 16-122, Staff maintains Section 16-122 does not allow the utility to release customer specific usage data unless it is provided anonymously or the customer has provided consent. Staff points out that Section 16-122(a) as well as subsections (b) and (c) are clear that customer specific billing, usage, or load shape data cannot be provided unless a customer provides authorization. Staff contends that reading Section 16-122 and Section 16-108.6(d) as though they are not an exclusive list as CNT urges would lead to an absurd result. (Staff Reply Comments at 4). Under CNT's theory, someone or some entity who is not acting as an agent for a customer, for example a customer's neighbor, friend, or creditor, would be entitled to a customer's information since nothing in Section 16-122 specifically addresses the release of such information to someone who is acting as a customer's neighbor, friend, or creditor, and only addresses a retail customer or their agent, alternative electric suppliers and units of local government. Staff argues this is clearly not what the legislature intended. Staff contends that it would not make sense that the statute would put restrictions on agents, ARES, or units of municipal government but allow any other entity broad access to information. (*Id*.). Further, this interpretation ignores the plain language of Section 16-

122(a) which provides that customer information (customer's billing and usage data) can only be released to a customer or a customer's agent who presents verifiable authorization. (220 ILCS 5/16-122(a)).

Staff also takes issue with CNT's proposed methods for aggregating individual customer data provided by a utility to third parties. Method 2 appears to be very similar to Staff's and ComEd's recommendations, but with a much lower "floor" of a minimum of four customers, as compared to Staff's and ComEd's recommended minimum of 30 customers. (Staff Surreply Comments at 4). Staff continues to advocate for the zip code plus 2-4 methodology with the minimum number of customers being 30. Staff also has concerns with Method 3. It believes the portion of the proposed method which states that the "remaining personal fields…have been encoded in a format that would allow merger with other datasets without revealing the encoded information in either dataset" clearly contravenes Section 16-122. Staff observes that CNT suggests that the merger would be accomplished either by the utility or a third party that is an "ICC-approved entity with housing, Census and energy data analysis expertise." (*Id.).* Staff states this approach raises a number of questions; such as would such an entity receive this ICC-approval? What would the standards be upon which the Commission would grant such approval? Would such approval be needed annually? Even if the Commission could adequately judge an entity to possess energy efficiency expertise, what are the standards of housing and Census data expertise? For these reasons, Staff believes Method 3 is unworkable because it is far too complicated and opens the door to new requirements which the Commission has no direction upon which to follow.

2. ComEd

ComEd notes that the parties agree that Sections 16-122 and 16-108.6 of the PUA permit a utility to provide information containing an individual customer's use of, charges for, or payments for electric utility service without any customer identifiable information and in a manner that practically prevents the linkage of that data to the customer or to other customer specific information, such as an address.

ComEd believes a utility can provide data at the individual customer level if it is provided anonymously. Like Staff, it proposed to anonymize customer data by aggregating it for a geographic area of at least 30 customers of each type and class based on zip codes. (ComEd Initial Comments at 5). It supports Staff's proposed Data Protocol and recommends that the Commission adopt it to govern the release of aggregated, anonymous customer usage information. In ComEd's view, this methodology provides the appropriate protection level for Illinois customers. In addition to being more conservative and creating a greater degree of anonymity and consumer protection than a smaller grouping, the proposed rule of 30 customers has been strategically vetted for ComEd resource feasibility and is generally considered to be workable.

ComEd asserts that some of the disagreement among the parties over the appropriate size of the grouping of customer information stems from confusion over the meaning of the term "aggregated" as used in the Commission's Initiating Order and in

the Staff Report. ComEd has always understood that term to refer to individual customer information that was "grouped" according to zip code, rather than customer information that was summed up or added together in some fashion such that no individual customer information remained. It asserts that this understanding finds support in both the Staff Report and the Initiating Order.[3] ComEd believes that the issue in this proceeding relates only to the release of data at the individual customer level and not to the release of customer information that has been added together or summed up in some fashion. As such, it is the only issue that ComEd's comments in this proceeding have addressed. ComEd does not believe that the latter issue need be or should be addressed in this proceeding and asks that the Commission's order in this proceeding be clear that it is only addressing the release of individual customer information.

ComEd notes that several parties recommend that de-identified data at the individual customer level be provided in groupings smaller than 30. ComEd recognizes, as CUB points out, that other states have adopted a "15/15" rule. ComEd understands the need for the data as well as the competitive nature of the Illinois market, which naturally leads parties to seek more granular information to further their competitive advantage. ComEd observes that other states which have adopted the "15/15" rule (Colorado and California) do not have retail competition. So, it is likely that there are fewer parties seeking data in those states at a lower frequency than in a competitive state. (ComEd Surreply Comments at 3). Therefore, ComEd argues the appropriate customer grouping level must be carefully considered given the differences in the market structure, and tailored for the environment in which it is used.

ComEd believes the proposed rule of 30 customers provides very similar, useful anonymous customer usage data for appropriate use by third parties, while providing more protection against the possibility of identifying any individual customer within the group. It notes that while the "15/15" rule's requirement to cluster customers in groups of not less than 15 customers for any given region may be similar to the proposed rule of 30 customers, its secondary requirement to remove a customer from regional samples when such customer's total usage is at or above 15% of the total usage within the sample may become resourcefully burdensome to ComEd, which may indeed result in greater costs to employ the "15/15" data extraction methodology. (*Id*.).

Additionally, ComEd states that it has concerns with respect to the proposals by CNT and the City to reduce the groupings to 4 meters/customers. Simple probabilities suggest that as the number of customers being grouped gets reduced, the easier it becomes for those customers' identity to be exposed. ComEd also observes that CNT makes an additional proposal for encoding the data and merging it with other

[3] On page 2 of the Staff Report, under the topic "Aggregated Customer Data," Staff describes the data as "data at the individual customer level but without data identifying the customer to which the data corresponds." Similarly, at page 1 of the Initiating Order, the Commission describes the issue as "Utilities regularly receive requests from third parties for information that includes usage and billing data at the individual customer level but in such a manner that customer identities and billing data are not revealed."

databases. However, ComEd argues this proposal goes well beyond the issues in this proceeding.

3. Ameren

Ameren maintains that Sections 16-122 and 16-108.6 do not require utilities to release information to third parties not referenced therein. However, Ameren believes those sections do not prohibit the release of aggregated, anonymous customer usage information to the extent that such information is presented in a manner that precludes an individual or entity from determining the usage characteristics (or other personal identifying information) of identifiable end users. Ameren states that information is not "customer specific" or "personal information" if such information cannot be reasonably linked back to an identifiable customer. (Ameren Initial Comments at 4).

To the extent there is confusion about the use of the terms aggregation versus anonymity, Ameren states that its position is that data may legally be provided on an anonymous, individual customer level, but such data should be grouped together by geographic locale in order to promote efficiency in processing requests for information and as another layer of customer protection.

For this reason, Ameren supports Staff's Data Protocol recommendation and it believes this solution balances a need for access to data with utility administrative concerns and the statutory prohibitions embodied in the PUA. Ameren's position is predicated upon recovery of any costs incurred in providing the data in the manner suggested and with the understanding that utilities must maintain a certain amount of flexibility in designing and administering systems to support access to the same.

Ameren does not dispute CUB's contention that the 15/15 Rule discussed in its Reply Comments and adopted in states such as Colorado and California may have certain benefits with respect to balancing granularity and anonymity, but the company has reservations about the added complexity and increased costs of providing data in such a manner. Ameren believes that in this case, those potential detriments may outweigh any additional benefits obtained in "shrinking" the geographic area beyond that recommended by Staff. Ameren has concerns about lowering the threshold even further to the level of 4 or more de-identified customers suggested by the City and CNT. Ameren believes that lowering the threshold to this level may substantially increase the likelihood that individual consumers could be identified, even if only inadvertently, through examination of usage trends or consumptions patterns within the smaller sample. (*Id*. at 3).

Ameren does not believe this proceeding needs to address questions related to the release of aggregated (summed) data. For this reason, Ameren does not respond to the City's and CNT's concerns related to the release of such data.

4. CUB

CUB contends that Sections 16-122 and 16-108.6 of the Act do not prohibit the discretionary release of information by an electric utility to a third party, subject to the restrictions on the dissemination of "customer specific" and "personal information" (discussed in further detail below). CUB recommends that the Commission conclude the following is allowed with respect to the release of customer usage data:

a) Under Illinois law, a customer's usage data belongs to that customer. Access should be provided freely, in as close to real-time as practicable and actionable, and through the most straightforward and simple means possible.

b) Under Illinois law, third parties given customer authorization stand in the shoes of the customer and should therefore have the exact same level of access.

c) Under Illinois law, individual customer usage information cannot be shared with a third party absent customer consent if that data is matched with any personal customer information, defined as information that could be used to identify a customer: name, address, telephone number, account number, a single individual's usage. Only when a customer authorizes a third party to have access to this information may an electric utility provide any individual, personal customer information. The controlling legal principle here is whether or not an individual customer's usage, or other personal information such as an address or account number, could be identified from any sample of usage data provided to a third party by a utility without customer authorization. An anonymized, compiled data set of individual customer usage can be shared with third parties under the law so long as you cannot identify an individual customer. A sample may be grouped by ZIP code, ZIP +2 or ZIP +4, as well as by customer class, without violating Illinois law. (CUB Reply Comments at 7).

When releasing an anonymized, compiled data set of individual customer usage, CUB proposes an alternative protocol for the Commission's consideration based on standards developed in California, Colorado and Minnesota. Specifically, CUB proposes a "15/15 Rule" whereby utilities would provide 12 months of customer usage data of at least 15 customers organized by groups of customers within the same ZIP +4 area after stripping any identifiable information (name, address, account number, etc.). (*Id*.). A single customer's load must not comprise more than 15% of the customer group. If the number of customers in the dataset is below 15, or if a single customer's load is more than 15% of the total data, utilities must expand the geographic area, moving to a ZIP+2 level for example. CUB explains that if expanding the geographic area reaches the 15 customer threshold, but a customer still comprises 15% or more of the usage data, that customer is simply dropped from the dataset. (*Id*.). If the 15 customer requirement is not met after the first expansion of the zip code, the sample size is expanded to the ZIP

level. CUB believes its proposed protocol will preserve customer anonymity but also provide the granular data needed by third parties.

5. CNT

CNT argues that Section 16-122 is a non-exclusive list of situations in which the electric utility must make certain data available to certain parties. CNT maintains that, because this section was created as part of an effort to create retail electric competition in Illinois, it does not contemplate the numerous additional situations in which data sharing is necessary and appropriate under the Energy Infrastructure Modernization Act ("EIMA"). Consequently, CNT maintains, requests for customer information that fall outside of the list contained in Section 16-122 are subject to the limitations placed on data releases by Section 16-108.6(d) and the Consumer Fraud and Deceptive Business Practices Act ("Consumer Fraud Act"). CNT contends that the assertions by the AG and Staff that this interpretation is flawed are incorrect.

CNT agrees with the City that the Commission should clarify the distinction between "aggregated data", "anonymous data" and "de-identified data". CNT also notes that the City's suggested definitions are consistent with the way that CNT has used these terms and CNT supports the adoption of these definitions. CNT argues this proceeding only concerns the release of individual customer data to third parties that do not have the customer's authorization to receive their data. It is CNT's position that the release of aggregated data – the sum of multiple customers' energy use – is not within the scope of this proceeding. (CNT Surreply Comments at 5). CNT recommends therefore that the Commission either (1) decide that utilities may release aggregated data, so long as the aggregation sums the data of 4 or more customers or (2) make no decision related to aggregated data, determining that it is outside the scope of this proceeding and leaving the status quo in place.

CNT supports the release of anonymous, de-identified individual customer usage data. CNT believes there are several ways of ensuring that data released by the utilities meet the provisions of Section 16-108.6(d), which requires that AMI plans secure the privacy of customers' personal information. CNT contends that individual customer usage data can be made anonymous, and so can meet this requirement, by removing the personal information attached to each set of customer usage data. CNT argues that it is not necessary to further limit the data by requiring that the geographic area in which a customer resides must contain a certain number of customers.

CNT asserts that if the Commission were to decide that this information could be released only when it is related to a zip code or other geographic group of a certain size, it proposes that individual customers' data should be provided by the utility to third parties after being treated with one of the following methods, or with an alternative method that provides the same level of anonymity to the individual customer:

Method 1 (Aggregation):

> Aggregated customer energy use data will be provided so long as the aggregation sums the energy use information of at least 4 electric meters.

Method 2 (De-identification):

> Individual customer energy use data will be provided without personal information, but with a five-digit zip code plus the first two to four additional zip digits ("zip+2-4"). This data will be provided only when that grouping has at least 4 meters of each type or class for which data is provided.
>
> In the event the zip+4 grouping has fewer than 4 meters, the electric utility would provide the requesting party only data on the next higher zip code basis, subject to the same 4-meter restriction. Should the 4-meter condition still not be met, the electric utility should aggregate further using fewer digits of the zip code, and so on, until the condition is met. If the condition cannot be met at the five-digit zip code level, no data for the impacted meters would be provided. Maintaining a minimum 4-meter requirement ensures no information would be divulged that could identify an individual customer.

Method 3 (De-identification that allows the merger with housing character and Census data):

> The electric utilities may release customer energy use data where: (1) personal information that is not necessary to merge the dataset with another has been removed from the dataset, and (2) remaining personal fields, which are needed to merge the dataset with other data, have been encoded in a format that would allow merger with other datasets without revealing the encoded information in either dataset.
>
> The merger required by this third method may be accomplished by the utility, the third party under supervision of the utility, or under contract with an ICC-approved entity with housing, Census, and energy data analysis expertise. The utility, third party, or ICC-approved entity will then de-identify the resulting post-merger dataset as set forth in Method 2, and make it available, at a reasonable fee to cover expenses, to researchers and other third parties.

(CNT Reply Comments at 15).

CNT notes that its initial proposal recommended a minimum group size of five but it later revised it proposal to recommend a minimum group size of four instead. CNT states that it supported a grouping of five initially because it matches the multifamily housing industry's definition of a multifamily building as having five or more units.

However, after further reflection it recommended a grouping of four since this size group provides the equivalent amount of privacy protection, is small enough to avoid conflict with multifamily industry or Census data definitions, and fits with ComEd's Energy Usage Data system ("EUDS"). (CNT Surreply Comments at 7).

CNT also argues that the Commission should explicitly endorse the use of proxy and encryption methods to prevent the release of personal information, while allowing certain data-analysis functions such as mergers with Census data or publicly available housing characteristics datasets to occur. CNT maintains that, if personal information is replaced by a random proxy variable or is encrypted in such a way that it cannot reasonably be decoded by a third party, the information being released is no longer personal information. CNT further maintains that performing these data-analysis functions is critical to the research needed to improve Illinois' energy efficiency and dynamic pricing programs.

6. ICEA

ICEA states that its members are seeking from the utilities, de-identified individual customer level data such that the data will not include and therefore not reveal the customer's name, address, telephone number or any other customer identifying information. ICEA maintains that since the de-identified individual customer level data would not reveal any customer identifying information, the release of this type of data would not violate sections 16-122 and 16.108.6. (ICEA Reply Comments at 2). In addition, since no customer specific information would be revealed, the statutory requirement for customer authorization is not applicable.

ICEA notes that Staff agrees that access to de-identified individual customer level data has been requested by local governments, educational and research institutes, and ARES for several notable reasons such as developing studies involving "energy efficiency, demand response, economic development, and the need for, and efficient delivery of, customer assistance." ICEA explains that this type of information provides the public valuable knowledge regarding energy usage. For ARES, this type of de-identified individual customer level data is critical to the development of new products and services for residential and small commercial customers.

While ICEA believes the protocols proposed in this proceeding appear to achieve the same objective, ICEA states that it does not have the necessary data to determine which should be adopted by the Commission. However, ICEA agrees with CNT and encourages the Commission "[t]o create a rule that is flexible enough to accommodate evolving data analysis and privacy protection methods." ICEA states that such an approach achieves the competing objectives of satisfying a legitimate need for data analysis while protecting customer privacy. (ICEA Surreply Comments at 2).

7. RESA

RESA states that it supports and endorses the comments filed by ICEA. It recommends that the Commission adopt ICEA's position. (RESA Surreply Comments at 1).

8. AG

The AG notes that all but one of the parties appears in agreement on the need to protect customers' privacy by providing usage and billing information only on an anonymous and aggregated basis. The AG proposes a three-tier framework to govern usage data requests. It explains that the first tier would apply to requests for monthly usage data for a specific building on an aggregated basis. Under Tier One, utilities could be permitted to release such data as long as there are at least 4 accounts in the aggregation group and as long as the accounts are de-identified of all personal information. The second tier would apply to all other types of usage data requests (such as, for example, requests for interval data or individual monthly usage data from specified geographic areas). Utilities could release these kinds of data only after individual accounts are de-identified and randomly designated in groups of 30 accounts (as previously proposed by Staff and others), or pursuant to CUB's suggestion of the "15/15" rule in which there must be at least 15 accounts in a group and no one account can represent 15 percent or more of the total consumption. The third tier would require individual customer consent and apply to requests for data that fall outside of the initial two tiers. (AG Surreply Comments at 2-3).

The AG states that it is not aware of any statistical analysis suggesting that a 15 customer threshold would be any less protective of consumer privacy than a 30 customer level. Additionally, the AG asserts that while both proposals appear to be acceptable to the AG, the Commission may have a preference for the 15/15 rule as it is used in other jurisdictions and would represent a compromise position between the 30 customer threshold and the smaller (4 or less) thresholds advocated by the City and CNT.

The AG agrees that it is helpful to distinguish between (1) "aggregation" and (2) "de-identification" as means of anonymizing usage data. In the AG's view, aggregated data should mean usage data that is summed or averaged from accounts in a specific building or geographic area. (*Id*. at 2). De-identified data should mean individual usage data, designated on an account-by-account basis, from a specific building or geographic area that has all identifying information (name, account number, address, etc.) removed. The AG states that aggregated data is a form of de-identified data but one that has undergone the additional step of being summed or averaged with other accounts. The AG believes de-identified data can be designated on an account-by-account basis by assigning separate random designations such as "Account Q" to each data set in order to provide the data on a separate account basis without revealing any meaningful identifiers about the particular account.

The AG takes issue with CNT's interpretation of the parameters of Section 16-122. The AG maintains that the regulatory framework scheme governing customer

information is premised on the need to protect customers' information, not release it, and with specific narrow exceptions made for its limited release. It argues that given the language of the statute, CNT cannot reasonably maintain that it was the General Assembly's intent in passing Section 16-122 to passively authorize any requests for customer information not mentioned in the statute. (AG Reply Comments at 4). Such a reading turns rules of statutory construction on their head by treating the statute's limitations on release as exceptions to some unwritten law requiring utilities to release this information.

The AG also challenges CNT's allegation that Section 16-108.6(d) of the Act leaves utilities' the discretion to disseminate any customer-related information subject to that statute's requirement that the utility shall secure the privacy of customer's personal information in implementing its AMI Plan. The AG argues this provision is not a blank check written to the utilities with respect to the distribution of personal information in other instances. (*Id*. at 5). CNT's contention that utilities must be required to release customer addresses to enable CNT and other like-minded organizations to answer research questions and administer energy efficiency programs is also problematic in the AG's opinion. It maintains that this directly contravenes the Consumer Fraud Act and Section 16-108.6(d) which both state that customer addresses should be protected from general dissemination. Finally, the AG argues that the limitations CNT believes aggregation places on research are the result of the statutory language itself, and as such, CNT must address these limitations through the legislative process. Until such laws are passed, the Commission is not in the position to authorize the release of information as personal as a customer's address without specific customer consent.

9. ELPC

ELPC notes that it appears that all parties are in agreement that electric utilities should be able to share individual customer data when it is sufficiently anonymized and stripped of detail such that the data cannot be reasonably linked back to any individual customer. The only question appears to be the particular method or methods to be used in "anonymizing" or "de-identifying" the data. ELPC appreciates the detailed Reply Comments provided on this topic by the City. The City points out that "aggregating" data from a number of individual customers is one way to get to anonymous data, but there are other ways to anonymize data without aggregating data. ELPC observes that CNT similarly points out that new methods of data encryption may also be used to strip datasets of any personal information.

ELPC agrees with the City's and CNT's recommendations that the Commission avoid picking one single method for "anonymizing" data and instead clarify that utilities may share data broadly so long as customer identities and billing data are not revealed. Once data is sufficiently "anonymized" there should be no further requirement that the geographic area in which the customer resides contain any particular number of customers. (ELPC Surreply Comments at 2-3). However, if the Commission finds that any geographic restriction is necessary, ELPC agrees with the City that data should be considered sufficiently anonymized when the customer to whom the data relates resides in a given geographic area with at least three other members of the same delivery class.

10. City

The City believes that an electric utility should be able to share individual customer data when either: (1) the data is used for non-commercial purposes and is anonymized or (2) required by state law or Commission order. For purposes of this protocol, the City states data should be considered "anonymized" when "customer specific information" is removed. Once "anonymized", there should be no further requirement that the geographic area in which the customer resides contain any particular number of other customers. The City maintains that if the Commission finds that any geographic restriction is necessary, CNT's revised protocol should be adopted reflecting a group size of four. (City Surreply Comments at 8).

The City argues that the release of aggregated data is outside the scope of this proceeding and the Commission therefore should not rule on the instances and methods by which an electric utility may share aggregated data. However, the City states that if the Commission decides that it must rule on this issue, the Commission should adopt the least restrictive proposal and at a minimum allow electric utilities to share aggregated data when individual customer data of four or more accounts are aggregated.

The City contends that the terms used to discuss this issue should be explicitly defined by the Commission, particularly to distinguish between anonymous data and aggregated data. The City recommends that the Commission adopt the following definitions:

a) Customer Specific Information – The Commission should interpret "customer specific information" to only include information attributable to an actual, specific customer of the utility. In doing so, the Commission should recognize that "customer information" is not the same as "customer specific information."

b) Aggregated Data – Aggregated customer data and anonymous customer data are similar terms but have separate meanings. The Staff Report appears to actually mean "anonymous" or "de-identified" in certain instances when it refers to "aggregated" data. To be clear, data aggregation is one way to get to anonymous data, but there are other ways to anonymize data without aggregating data across individual customers. The Commission should recognize this distinction by defining "aggregated data" to mean data from multiple individual customers that is grouped together.

c) Anonymous Data – Anonymous customer data and aggregate customer data are distinct concepts that require distinct interpretations by the Commission. Anonymous data is "de-identified," insofar as "customer specific information" is removed from that data. However, in order to be anonymous, individual customer data need not be grouped together with

individual data from other customers. That is, anonymity does not require aggregation.

d) Individual Customer Data – The Commission should interpret this term to be the unmodified set of data an electric utility possesses regarding its individual customers. "Customer specific information" is, thus, a subset of individual customer data. Aggregated data is a grouping of various sets of individual customer data. Anonymous data is individual customer data with customer specific information removed.

(*Id.* at 2-4).

Finally, the City agrees with CNT's position that Section 16-122 is a non-exclusive list of situations in which the electric utility must make certain data available to certain parties. The City also agrees with CNT's statement that reading this section as an exclusive list would eliminate important customer benefits created by EIMA. Therefore, the City concludes that reading this section as an exclusive list as Staff recommends would not serve the state's policy goals and would be contrary to the statutory language.

11. Commission Analysis and Conclusion

As noted in the Staff Report, the deployment of AMI brings with it great potential for entirely new types of services and offerings and many of the reasons for requesting customer information appear to be in the public interest and to be consistent with the goals and objectives of the PUA. At the same time, the current law has specific prohibitions on the release of "customer specific information," requiring a careful balance between protecting a customer's privacy and exploring the full benefits of the smart meter infrastructure.

The Commission observes that Section 16-122 of the PUA addresses utilities' obligations to disclose information about their customers' use of electric utility services and imposes limitations on that disclosure. Under Section 16-122(a), "electric utilities shall provide" to a requesting "customer or its authorized agent the customer's billing and usage data." However, in the absence of express authorization by the customer, Section 16-122(b) provides that a utility shall make available to RESs only "generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification." Subsection (b) also provides that "no customer specific billing, usage or load shape data shall be provided" unless specifically authorized by the customer. Similarly, Section 16-122(c) requires the release to local governments of "available information concerning the usage, load shape curves, and other characteristics of customers by customer classification and location within the boundaries of the unit of local government," but bars the release of "customer specific billing, usage, or load shape data" unless authorized by the customer.

Similarly, Section 16-108.6 of the PUA requires electric utilities to secure the privacy of "personal information" as part of their AMI Plan and prohibits the disclosure of

such information by participating utilities for commercial purposes, except where authorized. The PUA does not define "customer specific information." Section 16-108.6 of the PUA, however, defines "personal information" as "the customer's name, address, telephone number, and other personally identifying information, as well as information about the customer's electric usage."

The parties agree that "customer specific information" is information about the customer's use of or payment for electric utility that is either expressly linked with a customer's identity or could, with reasonable effort, be linked to the customer's identity. The parties also agree, therefore, that information is not "customer specific" if it cannot be reasonably linked back to an identifiable customer. Additionally, the parties are in agreement that Section 16-122 and Section 16-108.6 of the PUA do not prohibit the release of aggregated, anonymous customer usage information to the extent that the information is presented in a way that precludes someone from determining the usage characteristics or other personally identifying data of identifiable end users.

The Commission clarifies that "anonymous data" is individual customer data with "customer specific information" removed. A number of parties have used the term "de-identified" to mean the same thing. The Commission believes it is necessary to also clarify that the term "aggregated" is used in this Order consistent with its use in the Staff Report and in the Initiating Order which use the term to refer to individual customer data grouped in certain sizes, and not to data that was summed up or added together in some fashion such that no individual customer data remained. The Commission considers the latter to be outside the scope of this proceeding and it does not address this issue.

The Commission concurs with the parties' agreed definition of "customer specific information" and their position on the release of "aggregated," anonymous usage information, and finds that electric utilities are not prohibited from making such information available to third parties enumerated in Section 16-122 without customer authorization. The Commission agrees that in order to protect personal and customer specific information from unauthorized disclosure, a Standard Protocol should be established and followed by the electric utilities when receiving requests for data concerning the use of electric utilities service at the individual customer level. The Commission finds that Staff's proposed Data Protocol should be adopted with one exception: the "15/15 Rule" as recommended by CUB, and applied in other jurisdictions, should be used. As the AG noted, no statistical analysis was provided demonstrating that groupings of 15 are any less protective of customer privacy than 30. The Commission is not persuaded by ComEd's argument that this method is "resourcefully burdensome," as they do not describe with specificity what that burden would be other than to say it may result in greater costs. Further, any party requesting aggregated, anonymous data is required to pay a reasonable fee, which would surely defray any additional cost. The Commission believes this methodology is a reasonable compromise of all of the parties' positions and will best achieve the goal of making granular data available to authorized third parties such as RESs while also protecting personal and customer specific information from unauthorized disclosure pursuant to

the PUA. Further, it also ensures that the utilities and RESs are compliant with Section 16-122 since no customer specific information will be divulged.

Like Staff, the Commission is sympathetic to CNT's concerns regarding the interpretation of Section 16-122, however, the Commission agrees with Staff and the AG that Section 16-122 does not allow the utility to release customer specific usage data unless it is provided anonymously to a service provider, in this case an ARES or municipality aggregating its residents' electric service, or the customer has provided consent. Section 16-122(a) as well as subsections (b) and (c) are clear that customer specific billing, usage, or load shape data cannot be provided unless a customer provides authorization. The Commission is of the opinion that Section 16-122 and Section 108.6(d) are an exclusive list and to interpret the statute otherwise ignores the plain language of Section 16-122(a) which provides that customer information (customer's billing and usage data) can only be released to a customer or a customer's agent who presents verifiable authorization. (220 ILCS 5/16-122(a)). The Commission sees the importance of striking a careful balance between protecting a customer's privacy while unlocking the full benefits of the smart meter infrastructure. Research institutions and program administrators, such as CNT, are an important part of maximizing the benefit of technology implemented as a result of EIMA. However, the Commission believes that the measures in this Order protect a customer's privacy and are consistent with the statutes in place at this time. CNT is certainly not prohibited from receiving anonymous, aggregated data or customer specific information subject to the findings in this Order and as a program administrator should make direct contact with its program participants to request this information. Just as other parties are obligated to do, CNT should obtain customer authorization for access to this information either through initial program signup or separate verifiable authorization consistent with Section 2EE of the Consumer Fraud Act.

B. Identifying PTR and NM Customers

1. Staff

Staff observes that Ameren interprets these combined issues as asking the following question: "Absent a show of consent or authorization, may a utility disclose to a supplier information about customers not served by such supplier, but that would allow it to determine which identifiable customers receive Net Metering and/or Peak Time Rebate service?" (Staff Reply Comments at 5). The question in front of the Commission, however, according to Staff should be what type of customer consent is needed before the customer can be identified as a PTR or NM customer? Staff argues the answer is that persons not in possession of a customer's account number should not be able to receive such information. Electric utilities should not be required to provide lists of customers that are PTR or NM participants, as this would contravene Section 16-122. For example, outside of the requirements pursuant to Section 1-92 of the Illinois Power Agency Act (the "IPA Act") (municipal aggregation) the utility should not be required to provide RESs with a list of customers that are on the space heat rate

or with a list of customers that participate in the utility's PTR program. (Staff Initial Comments at 7).

Staff maintains that possession of a customer's account number should be considered customer consent to receive certain information about such customer's account. Similar to the electric utilities currently releasing certain characteristics of a class or group of customers, the electric utilities should not be barred from identifying whether a customer is a participant in the utility's PTR or NM program. For example, RESs in the possession of a customer's account number are currently able to check information such as whether a customer is on the utility's space heat rate, whether a small commercial retail customer consumes less than 15,000 kWh annually and whether a customer lives in a single family or multi-family home. Accordingly, Staff recommends that the Commission expressly allow an electric utility to disclose whether a customer is a participant in its PTR program or a NM customer to an entity in possession of such customer's account number. (Staff Surreply Comments at 5).

2. ComEd

ComEd asserts that a customer's participation in the PTR or NM programs impacts the production of the customer's bill and therefore is billing data. As such, it asserts, verifiable authorization from individual customers is required under the PUA before disclosure may occur. ComEd states that the issue is what constitutes the appropriate level of customer authorization that must be obtained before a utility can release this customer specific billing and usage data regardless if the customer was acquired via "traditional" means where suppliers contacted customers individually via face to face, mailing or telemarketing or if the customer was acquired through the municipal aggregation opt-out, which means if they did not opt out of the municipal's program, they were included in the aggregation program.

ComEd has concerns about Staff's recommendation that the Commission expressly allow an electric utility to disclose whether a customer is a participant in its PTR program or a NM customer to an entity in possession of such customer's account number. (ComEd Reply Comment at 3). ComEd states that it does not oppose Staff's position although it notes that while this approach has the advantage of ease, the availability of a customer's account number is now much more widespread than it was historically.

3. Ameren

Ameren states that as a preliminary matter, it interprets the Staff Report as asking the following question: Absent a show of consent or authorization, may a utility disclose to a supplier information about customers not served by such supplier, but that would allow it to determine which identifiable customers receive Net Metering and/or Peak Time Rebate service. (Ameren Initial Comments at 6). Ameren believes a utility cannot disclose this information. To the extent the NM or PTR designation is coupled with information that would identify the customer or could reasonably be linked back to an identifiable consumer, Ameren does not read Sections 16-122 or 16-108.6 of the Act

to provide this flexibility, absent authorization or consent from an end user. Ameren views an NM and/or PTR designation to constitute "billing, usage or load shape data "as those terms are used in Section 16-122 and "information about a customer's electric usage" as used in Section 16-108.6 to the extent it is coupled with customer specific identifiers. (*Id*.).

Ameren agrees with Staff that the bigger question is whether authorization should be deemed to exist in situations where an entity can and does provide a customer account number. Ameren supports a process that would permit a RES in possession of an account number to access an identifiable customer's NM, PTR and/or Qualifying Facilities ("QF") designation and/or historical monthly usage data that is associated with that account. (Ameren Surreply Comments at 5).

Ameren also agrees with Staff that outside the confines of a municipal aggregation setting, a utility should not be required to (nor should they voluntarily) provide a list of individually-identifiable NM or PTR designations to an entity that does not have customer authorization to access the same. Ameren is of the same opinion with respect to QF designations.

4. CUB

CUB maintains that PTR and NM customers can be identified depending on the context of the request for identification of those customers from a third party. To the extent the NM or PTR designation is coupled with information that would identify the customer or could reasonably be linked back to an identifiable consumer, such disclosure would be barred by law. (CUB Surreply Comments at 6). As a result, CUB contends that third parties who do not have customer authorization cannot receive any data sample that flags a PTR or NM customer. However, CUB avers that the situation is different in the context of a municipal aggregation. Once a municipality has opted for an aggregation program, that program has been approved, and the municipality, electric utility and winning aggregation supplier are working together on the notification and enrollment of customers, CUB believes that PTR and NM customers can be identified. The law provides that all three groups will have access to customer name, address and account number in order to facilitate aggregation. (*Id*. at 7). CUB states that in that case, the law presumes authorization on the part of all customers within that municipality to share this information once the referendum has been approved.

5. ICEA

ICEA request that utilities identify on their data website which customers are on utility PTR programs (including whether the customer is actively participating in the program), AC cycling programs, or NM programs. ICEA argues that customer supply characteristics such as these do not violate the PUA and customer authorization is not required. (ICEA Surreply Comments at 3).

According to ICEA, such indicators are critically important to ARES and help alleviate residential customer confusion, complaints and the potential for invalid "double

enrollment" in utility and ARES sponsored demand response programs. ICEA also asserts that a NM indicator is also important because when a customer leaves the utility or switches from one ARES to another, there is no indication on the utility data website whether or not the customer is a NM customer. As noted in the Staff Report, there is a strong need for a seamless transition when NM customers switch between a utility and an ARES. ICEA believes these examples of consumer problems can be rectified by providing supply indicators on utility websites.

6. RESA

RESA states that it supports and endorses the comments filed by ICEA. It recommends that the Commission adopt ICEA's position. (RESA Surreply Comments at 1).

7. ELPC

ELPC agrees with Staff's position that electric utilities should not be barred from identifying whether a customer is a participant in the utility's PTR or NM programs. ELPC states that as a practical matter, a customer's mere participation in a utility's PTR or NM program, without more, presents none of the customer privacy issues that Sections 16-122 and 16-108.6(d) were intended to address. (ELPC Reply Comments at 2-3).

ELPC also agrees with Staff that possession of a customer's account number should be considered consent to receive information about the customer's status as a NM or PTR customer. (ELPC Surreply Comments at 2).

8. Commission Analysis and Conclusion

The Commission points out that all data exchanges must be conducted in a manner that is cognizant of the prohibitions against the dissemination of customer specific billing and usage data and personal information noted in Sections 16-122 and 16-108.6. The Commission finds that a customer's participation in PTR or NM programs impacts the production of the customer's bill and, as such, is billing data. Therefore, verifiable authorization from individual customers is required under the PUA before this information can be disclosed.

The issue then is what constitutes the appropriate level of customer authorization that must be obtained before a utility can release this customer specific billing and usage data. The Commission adopts Staff's recommendation that possession of an account number be considered customer consent to receive certain information about such customer's account, including whether the customer is a PTR or NM customer, or a participant in any supply related or demand response program offered by the utility. This is consistent with the electric utilities' current practice of releasing certain characteristics of a class or group of customers. For example, this practice allows RESs the ability to check information such as whether a customer is on the utility's space heat rate, whether a small commercial retail customer consumes less than

15,000 kWh annually or whether a customer lives in a single family or multi-family home.

The Commission also adopts Staff's recommendation that the electric utilities should not be required to provide lists of customers that possess one or more of the above mentioned characteristics, as this would contravene Section 16-122. For example, outside of the requirements pursuant to Section 1-92 of the IPA Act (municipal aggregation) the utility should not be required to provide RESs with a list of customers that are on the space heat rate or with a list of customers that participate in the utility's PTR program.

C. RES Access to its Customers' Interval Data for Non-Billing Purposes

1. Staff

Staff notes that the discussions in the workshop brought up the issue of providing interval data for RES customers that are on a more traditional rate, such as a non-Time-of-Use rate. Staff states the question is what type of customer authorization the RES would need to obtain in order for the utility to provide interval data to the RES and how the RES verifies to the utility that it has obtained proper customer authorization. Staff contends that there are two ways for RESs to obtain customer authorization to receive interval data from the utility. The first is through its initial sign-up of the customer. If a RES decides to go this route, the Commission should require RESs to disclose the authorization to receive interval data for non-billing purposes in the same prominent manner in which other crucial terms and conditions are required to be disclosed pursuant to Section 412.110 of the Commission's Rules. (Staff Reply Comments at 8).

Second, Staff states that if a RES did not prominently disclose the authorization to receive interval data when it originally signed up the customer, the Commission should require the RES to obtain separate, verifiable customer authorization before receiving interval data from the utility for non-billing purposes. Such verifiable authorization should be obtained in a form or manner consistent with Section 2EE of the Consumer Fraud Act, which describes the authorized ways of obtaining customer consent to switch electric service providers and which is mirrored in Part 412. Whether the RES obtains customer authorization to receive interval data when signing up a customer or obtains a separate authorization after the initial sign-up, Staff recommends that the Commission clarify in this Order that the responsibility to provide verifiable customer authorization rests solely with the RES.

Staff contends that as for the utility receiving any type of indication that the RES has obtained the proper customer authorization in the manner described above, the RES should be required to separately and affirmatively acknowledge to the utility that it has indeed obtained proper customer authorization. Staff believes it would be permissible to facilitate such indication via the electronic communications between the utility and the supplier, but Staff's position is that a RES simply submitting an enrollment request as it exists today should not be considered sufficient. At a minimum, the enrollment request should contain a new element that indicates to the utility that the RES has obtained proper authorization to receive interval data for non-billing purposes.

If a RES did not indicate possession of customer authorization at the initial enrollment request, the RES should be required to indicate having received customer authorization prior to receiving interval data for non-billing purposes.

Staff notes that ComEd generally supports its position but it also states that ComEd "believes that there may be more efficient, streamlined methods for achieving the same result." However, Staff asserts that ComEd fails to reveal what type of "more efficient, streamlined methods" it has in mind. Staff states in response that it is not opposed to the Commission providing for a certain flexibility concerning this process but Staff continues to recommend that RES be required to separately and affirmatively acknowledge to the utility that it has indeed obtained proper customer authorization. (Staff Surreply Comments at 6). Additionally, Staff states that it agrees with ComEd's statement that utilities should not bear the burden of physically receiving and reviewing written authorizations. Staff points out that no party has suggested this course of action, and Staff has previously stated that the authorization could be done via electronic communications. Staff recommends that if the customer authorization indication is done via electronic communications between the utility and the supplier, the enrollment request should contain a new element that indicates to the utility that the RES has obtained proper authorization to receive the interval data for non-billing purposes. (*Id*. at 7). If a RES did not indicate possession of customer authorization at the initial enrollment request, Staff recommends that the RES be required to indicate having received customer authorization prior to receiving interval data for non-billing purposes.

Finally, Staff recommends that the Commission clarify in this Order that the customer disclosure required for opt-out aggregations be used to obtain customer authorization to receive interval data for non-billing purposes. If an aggregation supplier desires to receive customer specific interval data for non-billing purposes, the opt-out disclosure to the customer must describe this fact and alert the customer that not opting out of the aggregation program will authorize the aggregation supplier to receive interval data for non-billing purposes as long as the customer remains in the aggregation program. If the opt-out disclosure does not contain such an authorization, the aggregation supplier has to obtain separate authorization from its existing aggregation customers if it wishes to receive interval data for non-billing purposes.

2. ComEd

ComEd notes that Staff's proposal would require a RES to obtain customer authorization for access to its customers' interval data for non-billing purposes either at the time of signing a customer up for service or else through a separate authorization in a form consistent with the Consumer Fraud Act requirements, and then affirmed to the utility through the direct access service request ("DASR") process that it has necessary authorization. ComEd states that it generally supports Staff's proposal regarding the level of authorization necessary to access customers' interval data but believes that there may be more efficient, streamlined methods for implementing this proposal rather than through the use of the DASR process. (ComEd Reply Comments at 4). It states

that utilities should not bear the burden of physically receiving and reviewing written customer authorizations, nor be required to demand proof of individual customer authorization prior to releasing interval usage data to a RES. ComEd urges that the details of the implementation should be left to, and addressed, in future workshops.

ComEd does not believe that possession of an account number alone is sufficient evidence of customer authorization for RES access to its customers' interval data in light of the highly detailed nature of AMI-enabled data. It argues that because smart meters collect energy usage data at much shorter time intervals than historically, the granularity of this data merits the Commission's careful consideration to ensure that the privacy of customers is protected.

ComEd argues the Commission should reject ICEA's position on this issue for several reasons. First, it ignores the whole history of open access and the information that has historically been provided to RES and other third parties. ComEd explains that the possession of an account number or Letters of Agency ("LOAs") has never been deemed to authorize a RES to access all of the customer information that ComEd possesses that could be referred to as billing or usage data. (ComEd Surreply Comments at 7). Second, it ignores municipal aggregation. ComEd states that signed LOAs are not required and do not appear to be used much in this context and ICEA's proposal to deem a customer has consented if they do not reject the supplier's terms and conditions contained within an aggregation program does not satisfy the requirement for verifiable authorization from a customer. (*Id*.).

3. Ameren

Ameren contends that LOAs or similar authorizations obtained from customers at the time of sign-up should expressly state and define the data to which a customer has granted access. Ameren states that to the extent such documents are not clear today, it would be best practice to amend or alter such documents to more clearly capture the scope of customer consent sought, and obtained, in a manner consistent with the Consumer Fraud Act. (Ameren Reply Comments at 4).

Ameren believes utilities should not be required to obtain a separate and affirmative acknowledgement from a RES demonstrating that the supplier has the requisite authorization necessary to access interval data. (Ameren Initial Comments at 9-10). Ameren states that utilities should not bear the burden of interpreting consent on a piecemeal or ad hoc basis. To the extent amending LOAs or customer contract documents does not relieve concerns tied to municipal aggregation, Ameren would be interested in participating in futures discussions on the topic.

4. CUB

CUB contends that a request for customer data should not be granted based on the purpose of the request. In CUB's view, there is no legal distinction drawn around the purpose of a request for usage data, only between whether or not a customer's

authorization is required. (CUB Reply Comments at 9). CUB notes that Section 16-122, for example, provides already that a customer's authorized agent can receive that customer's billing and usage data. (220 ILCS 5/16-122(a)). CUB states that the law also does not distinguish between interval and non-interval data or whether interval data is used for billing or not. CUB concludes that once a third party has a customer's authorization to access that customer's utility account, the third party effectively stands in the shoes of the customer. No further authorization is needed according to CUB. It asserts that it does not have a position on which method for documenting customer authorization is appropriate should the Commission feel that additional authorization is necessary.

5. ICEA

ICEA argues that under the statute, an ARES has the right to access its customer's data including interval usage data used for non-billing purposes. Under this scenario, the customer has signed a contract with an ARES and by virtue of this fact, has provided customer authorization under both Sections 16-122 and Section 16-108.6. ICEA states that under current industry practice, an ARES can obtain interval data recorded on an interval meter assuming the ARES has the customer's account number and this practice should not change. ICEA also states that when an ARES requests customer specific non-billing interval data, it should be considered usage data under Section 16-122 and released by the utility when the customer's account number is presented. ICEA maintains that a second authorization should not be necessary since the statute does not require it nor does it require proof of customer authorization before releasing interval data to an ARES to develop a time-variant product.

Equally important, ICEA contends that since the statute does not distinguish between whether interval data is used for billing or not, there is no legal authority preventing an ARES from obtaining its customer's interval data, even if it's used for non-billing purposes. (ICEA Initial Comments at 10). Therefore, ICEA concludes that the Commission should find that the utilities are in compliance with the statute when they release interval data used for non-billing purposes to an ARES when there is an existing contract between the customer and the ARES.

ICEA also argues that both Staff and ComEd fail to provide any legal justification for their position that additional authorization is required before interval data used for non-billing purposes is released to an ARES. Additionally, ICEA believes Staff may have misunderstood its position which is based on the ARES enrollment process which ICEA argues is fully consistent with Staff's recommendation that customer authorization be obtained by making it a prominent feature when initially signing up a customer. (ICEA Surreply Comments at 4).

6. RESA

RESA states that it supports and endorses the comments filed by ICEA. It recommends that the Commission adopt ICEA's position. (RESA Surreply Comments at 1).

7. AG

The AG contends that most consumers do not even known what interval data is or what interval meters do, let alone have interval meters installed to measure their personal or commercial electric energy usage. While these facts should not stall discussions on the topic, the AG believes that the novel nature of individual customer's interval data and the fact that it is not yet understood by the typical customer requires that, until stakeholders and the Commission itself are able to engage in more in-depth discussions with consumers and determine the appropriate conditions for its dissemination, conventional methods of consumer protection should govern the release of such information for non-billing purposes. (AG Surreply Comments at 5). This would require any entity seeking interval information from an individual for non-billing purposes to obtain express written consent from the customer after a clear and conspicuous disclosure of all material terms and conditions connected to the release of the information. The AG explains that such disclosure would include the requester's definition of interval data, what information they seek to collect, how the data will be stored, what security processes are in place to protect the data from unauthorized acquisition, what the data will be used for and what recourse the consumer would have in case of unauthorized release. (*Id*.).

The AG recommends that the Commission adhere to these traditional consumer protection principles and continue discussions on the proper release of interval data by engaging privacy advocates and consumer groups in public forums to understand the concerns of consumers, energy service vendors, and the academic community as well as power suppliers and regulators. (*Id*.). The AG states that it looks forward to further discussions on this important issue, but asks that the Commission defer ruling on the release of individual interval data for non-billing purposes at this time.

8. Commission Analysis and Conclusion

The Commission is aware that its decision on the issue of RES access to its customers' interval data for non-billing purposes has critical implications. Due to the fact that smart meters collect energy usage data at much shorter time intervals than historically, the granularity of this data merits the Commission's careful consideration to ensure that the privacy of customers is protected.

The Commission declines to adopt ICEA's position that the customer authorization requirements of Sections 16-122 and 16-108.6 are met if an RES has proper authorization in the form of the customer's account number and/or a customer supply contract. ICEA reasons that the Commission should deem the historic practice of submitting the customer's account number to the utility's website to satisfy the statutory requirement of verifiable authorization. The Commission rejects ICEA claim that it is seeking the "same" customer usage data for residential and small commercial customers that has historically been recorded by standard meters, only now that data will be recorded using interval recording smart meters. ICEA's position fails to acknowledge that because smart meters collect energy usage data at much shorter time intervals than in the past, the information they collect can reveal much more

detailed information about the activities within a dwelling or other premises than was available in the past, including knowledge about specific equipment usage or other internal home/business processes. Moreover, ICEA's position fails to take into account the municipal aggregation context where customers do not provide affirmative consent. Until late 2010, customers were acquired by RES via "traditional" means where suppliers contacted customers via face to face, mailing or telemarketing. Those traditionally acquired customers provided an affirmative consent to the release of their account number to their supplier. In municipal aggregation, a majority of the customers with a supplier are acquired via the municipal aggregation "opt out" process, which means if the customers did not affirmatively opt out of the municipal's program, they are in the program. For these reasons, the Commission does not find that possession of an account number and/or a customer supply contract alone to be sufficient evidence of customer authorization to access highly detailed AMI-enabled data.

Staff asserts that RESs should obtain customer authorization for access to this information either through initial signup or separate verifiable authorization consistent with Section 2EE of the Consumer Fraud Act. If authorization is obtained through initial signup, Staff recommends that RESs be required to disclose authorization in the same prominent manner in which other crucial terms and conditions are required to be disclosed pursuant to Section 412.110 of the Commission's Rules. Staff then proposes that RESs would certify to the utilities that they had obtained such authorization through the development of a new step in the DASR process. The Commission supports Staff's proposal regarding the level of authorization necessary to access customers' interval data, but prefers that the parties come together in an effort to reach consensus regarding the method for achieving this result in future workshops. Accordingly, the parties must come together to discuss the proper method for a RES to show to the utility that it has obtained the required customer authorization. This method should address the utilities' concern that they not bear the burden of interpreting the scope of consent obtained by suppliers, including physically receiving and reviewing written customer authorizations, or be required to demand proof of individual customer authorization prior to releasing interval usage data to a RES. Whatever method is agreed upon, it must be clear that the responsibility to obtain these customer authorizations rests solely with the RES, and that the RES should be required to separately and affirmatively acknowledge to the utility that it has proper customer authorization.

Additionally, the Commission agrees that the customer disclosure required for opt-out aggregations should be used to obtain customer authorization to receive interval data for non-billing purposes. As stated by Staff, if an aggregation supplier desires to receive customer specific interval data for non-billing purposes, the opt-out disclosure to the customer must describe this fact and alert the customer that not opting out will authorize the aggregation supplier to receive interval data for non-billing purposes as long as the customer remains in the aggregation program. The opt-out disclosure should make it clear that the customer has the ability to decline authorization for the release of interval data for non-billing purposes even if the customer does not act to opt-out of the aggregation program. If the opt-out disclosure does not contain such an authorization, the aggregation supplier has to obtain separate authorization from its

existing aggregation customers if it wishes to receive interval data for non-billing purposes.

D. Additional Issue Raised by ICEA: RES Access to Prospective Customers' Interval Data

1. ICEA

ICEA raised an issue that was not included on Staff's issues list: access to individual customer data when the customer is not an ARES customer. Unlike the discussion in Section III.C. herein, in the scenario presented by ICEA, no executed contract exists between the customer and the ARES. However, ICEA maintains that by providing their account number, the customer has provided authorization for the ARES to obtain individual monthly summary and historical interval usage data as well as billing and non-billing data. (ICEA Initial Comments at 11).

ICEA also states that if the Commission concludes that this accepted industry practice, which has been in place and used by the ARES for over ten years is insufficient to protect customer privacy, ICEA would support adding a layer of "security" to each utility's website for residential data. (ICEA Reply Comments at 9). Some of these additional security measures, which have been used in another state, include: requiring registered ARES to use a secure log-in ID for web access and/or requiring a pop-up window acknowledgement by ARES that they have customer approval for access to interval data.

ICEA argues that ComEd and Staff have failed to provide a legal basis for their criticism of its position. Thus, the Commission should find their arguments unpersuasive.

2. RESA

RESA states that it supports and endorses the comments filed by ICEA. It recommends that the Commission adopt ICEA's position. (RESA Surreply Comments at 1).

3. Staff

Staff maintains that the Commission should accept ICEA's position that possession of the customer's account number is sufficient for the utility to release historical monthly summary usage data to the requester. In fact, this is the practice today. (Staff Reply Comments at 11). Staff states that as explained in Section III.C.1 herein, the release of customer specific interval usage data requires more than the possession of the customer's account number. Staff's recommendation is the same for existing RES customers and prospective RES customers.

4. ComEd

As previously stated in Section III.C.2 herein, ComEd does not believe that possession of an account number alone is sufficient evidence of customer authorization for RES access to customers' interval data in light of the highly detailed nature of AMI-enabled data. Accordingly, it maintains that ICEA's argument should be rejected.

5. Commission Analysis and Conclusion

The Commission agrees with Staff and ICEA that possession of the customer's account number is sufficient for the utility to release historical monthly summary usage data. However, as stated in Section III.C.8 herein, the Commission finds that the release of customer specific interval usage data requires more than the possession of the customer's account number whether it is for existing RES customers and prospective RES customers.

IV. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) the Commission has jurisdiction over the parties and the subject matter herein;

(2) Section 16-122 and Section 16-108.8 of the PUA do not prohibit the release of customer usage information to the extent that the information is presented in a way that precludes someone from determining the usage characteristics or other personally identifying data of identifiable end users. Utilities are not prohibited from making such information available to third parties without customer authorization if they follow the defined Data Protocol described herein;

(3) All exchanges of customer specific data must be conducted in a manner that is cognizant of the prohibitions against the dissemination of "customer specific" billing and usage data and "personal information" noted in Sections 16-122 and 16-108.6;

(4) Sections 16-122 and 16-108.6 require verifiable authorization from individual customers before disclosure may occur regarding a customer's participation in the PTR or NM programs, and the disclosure of interval data (sequential blocks of time-specific data on the customer's energy use);

(5) Possession of an account number may be considered customer consent to receive certain information about such customer's account, including whether the customer is a PTR or NM customer, or a participant in any supply related or demand response program offered by the utility; and

(6) Sections 16-122 and 16-108.6 require RESs to obtain customer authorization for access to AMI interval usage data through initial signup or separate verifiable authorization consistent with Section 2EE of the Consumer Fraud Act. With respect to municipal aggregations, customer disclosure required for opt-out aggregations should be used to obtain customer authorization. The responsibility to obtain these customer authorizations rests solely with the RES, and the RES should be required to separately and affirmatively acknowledge to the utility that it has proper customer authorization. The parties shall commence within 30 days of the service of this Order a series of workshops in an effort to reach consensus regarding the method for achieving this result. ORMD Staff shall file a Staff Report within 90 days of the commencement of the workshops to inform the Commission whether such consensus has been achieved.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that this investigation on the applicability of Sections 16-122 and 16-108.6 of the Public Utilities Act pertaining to the release of customer specific information by electric utilities is concluded.

IT IS FURTHER ORDERED that the parties shall comply with Findings (2) through (6) above and the conclusions reached in the prefatory portion of this Order.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are to be disposed of in a manner consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 28rd day of January, 2014.

(SIGNED) DOUGLAS P. SCOTT

CHAIRMAN